

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

EASTERN DIVISION

No. 05-10849RGS

HELEN RUNGE,

Plaintiff

v.

WALTER J. KELLY,
KERRY L. BLOOMINGDALE, M.D., and
SUNBRIDGE NURSING AND
REHABILITATION CENTER,

Defendants

**DEFENDANT WALTER J. KELLY'S
OPPOSITION TO PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER**

AND

**CROSS-MOTION TO COMPEL PLAINTIFF TO RESPOND TO REQUESTS
FOR PRODUCTION OF DOCUMENTS**

NOW COMES the Defendant, Walter J. Kelly, ("Kelly"), and opposes the Plaintiff's Motion for a Protective Order and moves to compel the Plaintiff to respond to Defendant's Requests for Production of Documents pursuant to Fed. R. Civ. P. 37. The subpoenas for which the Plaintiff seeks a protective order seek medical records of the Plaintiff that should have been produced by the Plaintiff in response to Defendant's Requests for Production of Documents as they are in her "control" pursuant to Fed. R. Civ. P. 34. These documents are relevant and discoverable pursuant to Fed. R. Civ. P. 26(b)(1) and Defendant is entitled to obtain them whether it be through subpoena or in response to Defendant's document requests. As grounds in support of this opposition and cross-motion, Defendant submits the accompanying Memorandum of Law and supporting documents.

WHEREFORE, the Defendant, Walter J. Kelly, respectfully requests that this Honorable Court deny Plaintiff's Motion for a Protective Order and allow Defendant's Motion to Compel Plaintiff to provide complete responses to Requests for Production of Documents Nos. 14 and 15, whether it be through a release or production of certified copies of her complete medical records.

Dated: January 30, 2007

The Defendant,

Walter J. Kelly,
By his attorneys,

s/ Michele Carlucci
George C. Rockas, BBO #544009
Michele Carlucci, BBO #655211
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LOCAL RULE 37.1 CERTIFICATION

I, Michele Carlucci, counsel for Defendant Kelly, certify that I have conferred with counsel for the Plaintiff in a good faith attempt to narrow the issues in dispute on January 17, 2007 and in correspondence dated January 17, 2007.

s/ Michele Carlucci
Michele Carlucci, Esq.

LOCAL RULE 7.1 CERTIFICATION

On January 29, 2007, I, Michele Carlucci, counsel for Defendant Kelly, conferred with Counsel for Defendant Sunbridge, Michael Williams, Esq., who concurs in the opposition and motion. On that date, I also spoke with counsel for Defendant Dr. Bloomingdale, James Hamrock, Esq., who also concurs in this opposition and motion, and refers to his email to counsel for the Plaintiff, Andrea Dean, voicing his concurrence. [See Exhibit G].

s/ Michele Carlucci
Michele Carlucci, Esq.

CERTIFICATE OF SERVICE

I, Michele Carlucci, certify that on January 30, 2007 I have served, by electronic filing (with exhibits) and regular first class mail (without exhibits), a copy of the following:

1. Defendant Walter J. Kelly's Opposition to Plaintiff's Motion for a Protective Order and Cross-Motion to Compel the Plaintiff to Respond to Requests for Production of Documents.

to all counsel of record:

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s/ Michele Carlucci
Michele Carlucci